

**DEPARTMENT OF THE ARMY LEASE  
FOR AGRICULTURAL OR GRAZING PURPOSES  
LOCATED AT  
Pomona Lake, Kansas**

**THIS LEASE**, made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_; hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 10, United States Code, Section 2667, and for the consideration set forth herein, hereby leases to the Lessee the property hereinafter identified as ***LU's 112, 114, 118 and 123, containing a total of approximately 47 acres***, as shown in Exhibit "B", attached hereto and made a part hereof, hereinafter referred to as the premises, for **Crop / Hay production**, and in accordance with the land use requirements identified in Exhibit "A", which is attached hereto and made a part hereof.

**THIS LEASE** is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of **5 crop/hay seasons**, beginning **January 1, 2009**, and ending **December 31, 2013**, but revocable at will by the Secretary. The first **hay-crop** year will be from **February 1, 2009 to December 31, 2009**. The second and any subsequent **crop/hay season(s)** will be from **January 1 to December 31** of that year.

**2. CONSIDERATION**

**a.** The Lessee shall pay cash rental in advance of \_\_\_\_\_ to the United States in the amount of -----\$\_\_\_\_\_ and thereafter annually by **January 1** to the order of the **"FAO USAED-Kansas City"**, and forwarded by the Lessee direct to **The USACE Finance Center, Kansas City District/G5, 5722 Integrity Drive, Millington, Tennessee 38054-5005**. Such cash rental shall be offset by the value of work items approved for abatement and accomplished by the Lessee for the maintenance, protection, repair, restoration, and improvement of the leased premises as described in the Land Use Requirements attached as Exhibit "A".

**b.** All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 U.S.C. Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty

charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from the due date. An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

### **3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the lessee, to the addressee as shown on page one, and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, Kansas City District, Corps of Engineers, 860 Federal Building, 601 East 12th Street, Kansas City, Missouri 64106-2896 or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

### **4. AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Operations Manager" or "said officer", include their duly authorized representatives. Any reference to "Lessee" shall include any sub-lessees, assignees, transferees, successors and their duly authorized representatives.

### **5. SUPERVISION BY THE DISTRICT ENGINEER**

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer, Kansas City District, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

### **6. APPLICABLE LAWS AND REGULATIONS**

The Lessee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

## **7. CONDITION OF PREMISES**

The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representation or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs or additions thereto.

## **8. TRANSFERS AND ASSIGNMENTS**

Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease, nor sublet the premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by the District Engineer.

## **9. COST OF UTILITIES**

The Lessee shall pay the cost, as determined by the officer having immediate jurisdiction over the premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the Lessee, including the Lessee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

## **10. PROTECTION OF PROPERTY**

The Lessee shall keep the premises in good order and in a clean, safe condition by and at the expense of the Lessee. The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to said officer, or at the election of said officer, reimbursement shall be made therefore by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

## **11. RENTAL ADJUSTMENT**

In the event the United States revokes this lease or in any other manner materially reduces the leased area or materially affects its use by the Lessee prior to the expiration date, an equitable adjustment will be made in the rental paid or to be paid under this lease. Where the said premises are being used for farming purposes, the Lessee shall have the right to harvest, gather and remove such crops as may have been planted or grown on said premises, or the District Engineer may require the Lessee to vacate immediately and, if funds are available, compensation will be made to the Lessee for the value of the remaining crops. Any adjustment of rent or the

right to harvest, gather and remove crops shall be evidenced by a written supplemental agreement, executed by the District Engineer; PROVIDED, however, that none of the provisions of this paragraph shall apply in the event of revocation because of noncompliance by the Lessee with any of the terms and conditions of this lease and in that event any remaining crops shall become property of the United States upon such revocation.

## **12. RIGHT TO ENTER AND FLOOD**

The right is reserved to the United States, its officers, agents and employees to enter upon the premises at any time and for any purposes necessary or convenient in connection with government purposes; to make inspections; to remove timber or other materials, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever, and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claims for damages on account thereof against the United States or any officer, agent or employee thereof.

## **13. INDEMNITY**

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Lessee, or for damages to the property or injuries to the person of the Lessee's officers, agents or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

## **14. RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee and restore the premises to a condition satisfactory to said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate or as otherwise specified by the provisions of the condition on **RENTAL ADJUSTMENT**. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefore, or the said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation or termination of this lease in restoring the premises.

## **15. NON-DISCRIMINATION**

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap or national origin.

## **16. SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with the use of the premises by the Lessee.

## **17. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development of Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local law.

## **18. TERMINATION**

The Lessee may terminate this lease at any time by giving at least sixty (60) days notice thereof, in writing, to the District Engineer. In the case of such termination, no refund by the United States of any rental previously paid shall be made and payment in full of all rent becoming due during the period of notice will be required. In the event the effective date of termination occurs after the start of the grazing, planting or harvesting season as specified in the Land Use Requirements, any rent due for the balance of the annual term, or the rental due for the remaining term if the lease is for less than one year, shall be due and payable on or before the date of such termination.

## **19. PROHIBITED USES**

**a.** Certain soil conservation practices may be required by the Land Use Requirements which are identified as rental offsets. By acceptance of such offsets, the Lessee agrees that he will not accept any Federal or State cost-sharing payments or subsidies for the same soil conservation practices.

**b.** The Lessee shall not construct or place any structure, improvement or advertising sign or allow or permit such construction or placement without prior written approval of the District Engineer.

## **20. PROTECTION OF NATURAL RESOURCES**

The Lessee shall use the premises in accordance with the attached Land Use Requirements and shall at all times: (a) maintain the premises in good condition and free from weeds, brush, washes, gullies and other erosion which is detrimental to the value of the premises for agricultural purposes; (b) cut no timber, conduct no mining operations, remove no sand, gravel or kindred substances from the premises; (c) commit no waste of any kind nor in any manner substantially change the contour or condition of the premises except changes required to accomplish soil and water conservation measures as may be authorized by said officer.

## 21. DISPUTES

**a.** Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

**b.** "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph c.(2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

**c.** (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$100,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief;

(iii) and The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

**d.** For Lessee claims of \$100,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$100,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

**e.** The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

**f.** At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certification described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

**g.** The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the Condition on

**CONSIDERATION.**

**h.** The Lessee shall proceed diligently with performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

**22. ENVIRONMENTAL PROTECTION**

**a.** Within the limits of their respective legal powers, the parties to this lease shall protect the premises against pollution of its air, ground and water. The Lessee shall comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions or instructions in effect or prescribed by the said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this lease. The Lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

**b.** The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from activities of the Lessee, the Lessee shall be liable to restore the damaged resources.

**c.** The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

**23. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of

antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

#### **24. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon the premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed in writing by the District Engineer.

#### **25. TAXES**

Any and all taxes imposed by the state or its political subdivisions upon the property or interest of the Lessee in the premises shall be promptly paid by the Lessee. If and to the extent that the property owned by the Government is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

#### **26. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fees, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

#### **27. OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise there from. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

#### **28. SEVERAL LESSEES**

If more than one Lessee is named in this lease, the obligations of said Lessees herein named shall be joint and several obligations.

#### **29. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modifications of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as other conditions of this lease.



**30. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned. The Lessee shall obtain any permit or license which may be required by Federal, state or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC Section 403), and Section 404 of the Clean Waters Act (33 USC Section 1344).

**THIS LEASE** is not subject to Title 10, United States Code, Section 2662, as amended.

**IN WITNESS WHEREOF** I have hereunto set my hand by direction of the Secretary of the Army this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
**W. Karl Mueller**  
Chief, Civil Branch  
Real Estate Division

**THIS LEASE** is also executed by the Lessee this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
LESSEE

\_\_\_\_\_  
STREET ADDRESS

\_\_\_\_\_  
CITY                      STATE    ZIP